

STEPHEN J. HIRSCHFELD (SBN 118068)
shirschfeld@cdhklaw.com
DONNA M. RUTTER (SBN 145704)
drutter@cdhklaw.com
KRISTEN L. WILLIAMS (SBN 232644)
kwilliams@cdhklaw.com
CURIALE DELLAVERSON HIRSCHFELD
& KRAEMER, LLP
727 Sansome Street
San Francisco, CA 94111
Telephone: (415) 835-9000
Facsimile: (415) 834-0443

Attorneys for Defendants
MICHAEL P. McGRATH, ALL RISKS, LTD.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CRUMP INSURANCE SERVICES, INC.,

Plaintiff,

vs.

MICHAEL P. McGRATH, an individual,
ALL RISKS, LTD., a corporation, and
Does 1 through 50, inclusive,

Defendant.

Case No. C-07-4636 MMC

**DEFENDANT ALL RISKS, LTD.'S
NOTICE OF MOTION AND MOTION TO
COMPEL RESPONSES TO (1)
RESPONSES TO REQUEST FOR
PRODUCTION NO. 39; (2) RESPONSES
TO REQUEST FOR PRODUCTION NO.
40; (3) LISTS PREPARED BY PETER
SCOTT WHICH ARE RESPONSIVE TO
REQUESTS FOR PRODUCTION NO. 1, 10,
13, 14, 19, 27; (4) EMAILS IDENTIFIED IN
HARGROVE'S DEPOSITION; (5)
DOCUMENTS FROM MCGRATH'S
HARDDRIVE RESPONSIVE TO
REQUESTS FOR PRODUCTION NOS. 1, 2,
5, 6, 7, 10, 11, 12, 13, 14, 15, 16, 24, 25, 33, 34,
35; AND (6) COMPEL FURTHER
DEPOSITION TESTIMONY REGARDING
THESE DOCUMENTS**

Date: August 6, 2008
Time: 9 a.m.
Judge: Maxine M. Chesney
Ctrm: 7

NOTICE OF MOTION

TO PLAINTIFF AND ITS ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on August 6, 2008 at 9:00 a.m. or as soon thereafter as counsel may be heard in Department 7 of the United States District Court, Northern District of California located at 450 Golden Gate Avenue, San Francisco, California, Defendant ALL RISKS LIMITED ("All Risks") will move this Court to compel Plaintiff Crump to respond further to discovery and to compel Peter Scott and Glenn Hargrove to appear for further depositions.

All Risks' motion is made on the grounds that there is good cause, because Plaintiff has failed to produce (1) responses to Request for Production Nos. 39 and 40; (2) the lists that Peter Scott made at the direction of All Risks' attorneys; (3) the email(s) identified by Glenn Hargrove in his deposition testimony; and (4) all responsive documents located in Defendant McGrath's hard drive. Plaintiff should be further compelled to either supplement its responses to Request for Production Set Two or to amend Its responses to provide that no such documents exist. Further, All Risks moves this court for an order compelling Peter Scott and Glenn Hargrove to appear for further depositions to answer questions regarding the documents. This motion is made on the grounds that Plaintiff failed to fully respond to All Risks' Requests for Production.

This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the declaration of Kristen L. Williams, all papers and pleadings on file in this action, and upon such other matters as may be presented to the Court at the time of hearing.

The undersigned certifies pursuant to Rule 37(a)(1) that the movant has conferred in good faith with the party failing to respond to discovery in an effort to obtain discovery without court action.

1 Dated: July 1, 2008

CURIALE DELLAVERSON HIRSCHFELD
& KRAEMER, LLP

2
3 By: Kristen L. Williams
4 Kristen L. Williams
5 Donna M. Rutter

6 Attorneys for Defendants
7 MICHAEL P. McGRATH, ALL RISKS,
8 LTD.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CURIALE DELLAVERSON HIRSCHFELD & KRAEMER, LLP
ATTORNEYS AT LAW
SAN FRANCISCO

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	3
II. STATEMENT OF FACTS	3
III. LEGAL ARGUMENT	9
A. Crump's Objections to All Risks' Discovery Requests Are Without Merit and Therefore Crump Should Be Compelled to Produce All Responsive Documents	9
1. All Risks's Request for Production No. 39 Is Relevant to The Parties' Claims and Defenses, Goes To Whether Crump Is Consistent in Its Claims and Establishes Evidence of Accepted Industry Practice in the Wholesale Insurance Brokerage Business	9
2. Request for Production No. 40 Is Also Directly Relevant to Crump's Claims and All Risks' and McGrath's Defenses.....	10
3. All Risks' Request for The Lists That Peter Scott Made at the Direction of All Risks' Attorneys Should Be Produced Because They Are Responsive to Numerous Requests for Production and Are Not Subject to Attorney-Client Privilege or the Work Product Doctrine.....	11
4. All Risks Is Entitled to Obtain The Email(s) Identified by Glenn Hargrove in His Deposition Testimony Because These Documents Are Responsive to Numerous Requests for Production Propounded by All Risks.....	14
5. Crump Should Be Compelled To Produce All Responsive Documents Located in Defendant McGrath's Hard Drive	15
6. Crump Should Be Compelled to Either Supplement Its Responses to Request for Production Set Two Or to Amend Its Responses to Provide That No Such Documents Exist.....	23
B. Further Depositions Should Be Compelled Regarding These Documents	23
IV. CONCLUSION	24

TABLE OF AUTHORITIES

Page

FEDERAL CASES

<i>Oppenheimer Fund, Inc. v. Sanders</i> , 437 U.S. 340, 98 S. Ct. 2380, 57 L. Ed. 2d 253 (1978)	9
--	---

STATUTES

Federal Rule of Civil Procedure 26(b)(1)	9
Federal Rule of Civil Procedure 26(e)	9, 15
Federal Rule of Civil Procedure 37	9

CURIALE DELLAVERSON HIRSCHFELD & KRAEMER, LLP
ATTORNEYS AT LAW
SAN FRANCISCO

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant All Risks, Ltd. (“All Risks” or “Defendant”) requests that this Court compel Plaintiff Crump Insurance Services, Inc. (“Crump” or “Plaintiff”) to provide documents that are responsive to several categories of its Requests for Production of Documents. Despite All Risks’ numerous attempts to meet and confer with Crump regarding its failure to produce documents that are responsive to All Risks’ requests, Crump has refused to do so, and instead hides behind baseless objections. Therefore, an order from this Court compelling Crump to comply with discovery is warranted.

II. STATEMENT OF FACTS

Crump and All Risks are wholesale insurance brokerage groups that provide excess, surplus, and specialty insurance (i.e., commercial earthquake insurance). In short, as insurance wholesalers, they match carriers with retail agents. The retail agents, rather than Crump or All Risks, sell directly to the insureds who purchase policies. Defendant Michael P. McGrath began working at Crump E&S of San Francisco Insurance Services, Inc. in June of 1996.¹ During his tenure with Crump, McGrath was a Senior Property Broker specializing in E & S (Excess and Surplus markets). As a Senior Property Broker, McGrath worked with the retail agents to put together quotes that the retail agent would then present to its insured.

In the wholesale insurance brokerage industry, brokers often change jobs. It is an accepted and common industry practice for retailers to follow brokers when they go to work for a different employer, because the wholesale insurance brokerage industry is a relationship-driven business. Retailers are the customers, and they decide who they want to work with. As such, retailers are often willing to transfer their business to another company so that they can continue to work with the wholesale broker of their choice.

¹ Since 1996, Crump E&S of San Francisco Insurance Services, Inc. was purchased twice and ultimately came to do business as Crump Insurance Services, Inc.

On June 4, 2007, McGrath left Crump to accept a position at All Risks. After McGrath left Crump, a number of retailers “who were his clients at Crump” decided to transfer their business to All Risks in order to keep working with their broker of choice. The testimony has been universal in this case that it is within the complete prerogative of the retailer to decide which wholesale broker to work with.

Crump filed suit against both McGrath and All Risks on August 31, 2007, claiming that, upon his resignation, Defendant Michael McGrath (1) breached the terms of a Memorandum of Understanding and (2) breached his fiduciary duty to Crump. Crump also alleges that both McGrath and Defendant All Risks (1) misappropriated trade secrets; (2) intentionally interfered with its prospective advantage with regard to its clients; (3) negligently interfered with its prospective advantage with regard to its clients; (4) intentionally interfered with its prospective advantage with regard to its employees; and (5) negligently interfered with its prospective advantage with regard to its employees. (Declaration of Kristen L. Williams (“Williams Decl.”), ¶2, and Exhibit A).

Peter Scott, McGrath’s former boss at Crump, testified that wholesale insurance broker and third party Cheryl Smith left Crump to work for a competitor in March 2008. (Williams Decl., ¶3, and Exhibit B). Defendants are informed and believe that while employed at Crump, Smith signed the same Memorandum of Understanding as Defendant McGrath. Additionally, when Smith left Crump, some of her retail clients followed her to her new job. Despite this, Defendants are informed and believe that Crump has not pursued any legal claims against Smith to date. (Williams Decl., ¶4).

On January 3, 2008, All Risks served Crump with its Request for Production of Documents Set One. (Williams Decl., ¶5 and Exhibit C). All Risks received Crump’s responses to its Request for Production of Documents Set One and responsive documents on March 13, 2008. (Williams Decl., ¶6 and Exhibit D). All Risks served Crump with its Request for Production of Documents Set Two on March 25, 2008. (Williams Decl., ¶7 and Exhibit E). Crump provided responses to All Risks’ Request for Production of Documents Set Two and responsive documents on May 1, 2008. (Williams Decl., ¶8 and Exhibit F). Because Plaintiff

1 represented in its responses to All Risks' Requests for Production that they would produce
2 responsive documents and did produce some documents, All Risks was under the impression that
3 Plaintiff had produced all non-privileged, responsive documents in its possession, custody or
4 control.

5 In an effort to minimize costs, counsel for Plaintiff and Defendants agreed to hold only
6 half-day depositions of key witnesses prior to the May 28, 2008 mediation date. (Williams Decl.,
7 ¶9). On April 4, 2008, Defendants deposed Mr. Scott for his first half-day session. Prior to April
8 4, All Risks had propounded requests for documents requesting that Crump identify the business
9 that Crump claims McGrath wrongfully took to All Risks (Request for Production Nos. 1, 10, 13,
10 14, 19, and 27). Plaintiff responded to these Requests for Production that "Crump will produce
11 any non-privileged responsive documents within its custody, control, or possession." Plaintiff did
12 produce some documents in response to the First Requests for Production. However, none of the
13 documents produced appeared to be responsive to these requests. Thus, Mr. Scott was asked
14 about these items in his deposition.

15 During the first day of Mr. Scott's deposition on April 4, Mr. Scott told Ms. Rutter that he
16 would provide her with several lists. The testimony from that deposition is as follows:

17 Q: "So here's my opportunity now to get the information in terms of what you believe
18 is the business that Mr. McGrath took from Crump."

19 A: "We'll provide you with a list."

20 Later in the same deposition, Mr. Scott testified as follows:

21 Q: "But you're saying that there were letters that were specifically sent by Mr.
22 McGrath requesting that a change of broker be made?"

23 A: "Yes."

24 Q: "Okay. And on which accounts?"

25 A: "We can provide you with a list."

26 Q: Okay. And so when -- what will happen, then, is I'm not going to be able to finish
27 your deposition today until I get this information, and then what we'll do is we'll resume
28 your deposition after I have an opportunity to look at that --

1 A: Okay.

2 Q: -- information.” (Williams Decl., ¶10, and Exhibit G).

3 In response, Plaintiff’s counsel stated, “Let me just say, just so that we’re clear, if this was
4 noticed as a PMK deposition, I think we probably would have a different approach to it, but I
5 think we can probably work together to short-circuit that issue and provide this list in a way that it
6 doesn’t have -- to the extent it has work product in it, that we either waive that privilege and
7 proceed on with the case. That’s a long way of me trying to explain why we, for example, didn’t
8 bring that list today, because I don’t know what questions you intended for Mr. Scott, et cetera, et
9 cetera.” Plaintiff’s counsel never objected to having Mr. Scott provide such lists. (Williams
10 Decl., ¶10).

11 On May 9, 2008, Defendant All Risks, Inc. mail-served to Plaintiff Crump its Request for
12 Production of Documents Set Three. (Williams Decl., ¶11 and Exhibit H). On June 10, 2008, All
13 Risks’ received Crump’s responses with objections only; Crump did not produce any responsive
14 documents. (Williams Decl., ¶12 and Exhibit I).

15 On June 17, 2008, Defendants deposed Glenn Hargrove, the former president of Crump.
16 During his deposition, Mr. Hargrove identified an email (or emails) between Defendant McGrath
17 and former employee Cindy Marty about leaving Crump. (Williams Decl., ¶13 and Exhibit J).
18 This was in direct response to the question of whether he had personal knowledge of Mr.
19 McGrath and Ms. Marty talking about going to work at All Risks while they were still employed
20 by Crump. (Williams Decl., ¶13 and Exhibit J). What concerned Defendants is that no such
21 email(s) had been produced by Crump despite Mr. Hargrove’s recollection of this information.

22 Mr. Scott’s second day of deposition took place two days later on June 19, 2008. At that
23 time, Ms. Rutter asked Mr. Scott whether he had created the list that he had previously testified
24 that he would create and provide per Ms. Rutter’s request. Mr. Scott testified that he had in fact
25 created the list and provided them to his counsel. Nonetheless, as of the date of Mr. Scott’s
26 second day of deposition, these lists had not been provided to Defendants. Mr. Scott testified as
27 follows in response to Ms. Rutter’s questions about the lists:

28 Q: “Now, Page 134 of your deposition you told me that you would provide me with a

1 list of...business of Crump that you claim Mr. McGrath wrongfully took to All Risks. Do you
2 have that list?"

3 A: "Not with me, no."

4 Q: "Okay. Did you prepare that list as I requested in April?"

5 A: "Yes."

6 Q: "Okay. And have you given that list to your counsel or a counsel? I know your
7 counsel's changed. So have you given it to an attorney representing Crump?"

8 A: "Yes."

9 Q: "Okay. And likewise, on Page 161 of your depo you indicated that you were not
10 aware of all the change in broker letters changing from Crump to All Risks after Mr. McGrath left
11 but that you could provide me with a list. Do you have that list?"

12 A: "Not with me, no."

13 Q: "Okay. And did you prepare that list at my request?"

14 A: "Yes, I did."

15 Q: "And did you provide that to your counsel?"

16 A: "Yes, I did."

17 (Williams Decl., ¶14 and Exhibit K).

18 On June 19, 2008, counsel for All Risks faxed a letter to Crump's attorneys in an attempt
19 to meet and confer regarding Crump's responses to All Risks's Request for Production of
20 Documents, Set Three. (Williams Decl., ¶15 and Exhibit L). On that same day, counsel for All
21 Risks also faxed a letter to Crump requesting that it produce the email(s) identified by Mr.
22 Hargrove in his deposition. (Williams Decl., ¶16 and Exhibit M). On June 20, 2008, counsel for
23 Crump responded to the meet and confer letter, refusing to produce any documents responsive to
24 Request for Production of Documents, Set Three. (Williams Decl., ¶17 and Exhibit N). The
25 letter further stated that in response to All Risks's request that Plaintiff produce the email(s)
26 identified by Mr. Hargrove in his deposition, "We have not withheld any document that fits the
27 description in Mr. Hargrove's testimony..." (Williams Decl., ¶17 and Exhibit N).

28 On June 24, 2008, All Risks' counsel sent another meet and confer letter to counsel for

1 Crump, responding to its June 20 letter and addressing additional outstanding discovery issues
2 related to Crump's failure to produce all previously requested documents. (Williams Decl., ¶18
3 and Exhibit O). Among other items, Defendants' counsel requested responses to Request for
4 Production Nos. 39 and 40. The June 24 letter further requested the email(s) described by Mr.
5 Hargrove in his deposition testimony, and also responsive documents found on McGrath's hard
6 drive, because these documents were potentially responsive to numerous Requests for Production
7 that All Risks propounded. The June 24 letter also requested documents responsive to All Risks'
8 Request for Production, Sets One and Two, among other items.

9 The letter concluded that Defendants would be willing to stipulate to a mutual extension
10 of time to file motions to compel if Crump could not produce the requested documents and
11 produce amended responses before All Risks' deadline to file a motion to compel, because
12 Crump's counsel had previously informed Defendants that they would be out of the office after
13 June 25 and for the remainder of the week at a firm retreat. (Williams Decl., ¶19).

14 In a letter dated June 25, 2008, counsel for Crump again refused to produce any
15 responsive documents. (Williams Decl., ¶20 and Exhibit P). On June 25, 2008, counsel for All
16 Risks responded to Crump's letter of the same date and also made a final attempt to meet and
17 confer on the outstanding discovery requests, specifically (1) All Risks Request for Production,
18 Set Three, Nos. 38, 39, and 40; (2) the lists created by Peter Scott at the request of Donna Rutter
19 during Mr. Scott's first day of deposition; and (3) documents from Defendant McGrath's hard
20 drive. (Williams Decl., ¶21 and Exhibit Q). Once again, counsel for All Risks offered Plaintiff a
21 mutual extension of time to file motions to compel so that further meet and confer discussions
22 could take place. (Williams Decl., ¶21 and Exhibit Q). Crump's counsel responded in a letter
23 dated June 25, 2008, again asserting baseless objections and refusing to produce the documents
24 requested. (Williams Decl., ¶22 and Exhibit R). Further, the letter failed to respond to
25 Defendants' offer of a mutual extension of time to file motions to compel so that further meet and
26 confer discussions could take place. (Williams Decl., ¶22 and Exhibit R). Given Crump's
27 response and the fact its counsel's offices would be closed for the remainder of the week,
28 Defendants interpreted such events as concluding their meet and confer efforts and proceeded to

file this motion to compel.

III. LEGAL ARGUMENT

A. Crump's Objections to All Risks' Discovery Requests Are Without Merit and Therefore Crump Should Be Compelled to Produce All Responsive Documents.

Under Federal Rule of Civil Procedure 26(b)(1), parties have the right to discover "any nonprivileged matter that is relevant to any party's claim or defense." Relevant information encompasses "any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S.Ct. 2380, 57 L.Ed.2d 253 (1978). Moreover, parties have the continuing duty to supplement or correct discovery responses to include information later required. (Federal Rule of Civil Procedure 26(e)). If a party fails to disclose documents responsive to discovery requests, the other party may move to compel disclosure and for appropriate sanctions. (Federal Rule of Civil Procedure 37).

Despite All Risks' numerous meet and confer attempts, Crump has failed to produce several categories of documents that are clearly relevant to the parties' claims and defenses. Therefore, All Risks requests that this Court order Crump to compel production of the following categories of documents.

1. **All Risks's Request for Production No. 39 Is Relevant to The Parties' Claims and Defenses, Goes To Whether Crump Is Consistent in Its Claims and Establishes Evidence of Accepted Industry Practice in the Wholesale Insurance Brokerage Business.**

Request for Production No. 39 : "All change of broker letters which REFER or RELATE to accounts previously handled by Cheryl Smith which changed to her new employer."

Response to Request for Production No. 39 : "Plaintiff objects to this request on the basis it is vague, overbroad, ambiguous and susceptible to a variety of interpretations. Plaintiff objects to this request as compound and unduly burdensome. Plaintiff objects to this request as seeking information neither relevant to the claim or defense of any party, nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent it violates rights of privacy, and to the extent any such documents contain proprietary, financial and/or confidential information. Subject to and limited by the foregoing, Plaintiff responds as follows: Plaintiff will not produce any documents related to accounts previously handled by Cheryl Smith which changed to her new employer."

//

Reason Documents Should Be Compelled:

Crump's objections are without merit. This request is not "vague, overbroad, ambiguous and susceptible to a variety of interpretations," because the request seeks only a specific type of document—Broker of Record letters—within a limited time period—after Cheryl Smith left Crump. Also, as stated in its meet and confer letter, All Risks offered to clarify exactly what the Request sought if Plaintiffs were confused as to the meaning of the request.

As to the objection as to the relevancy of this information, the request is directly relevant to whether Crump is consistent in its claims. Cheryl Smith was a broker with Crump and has since left Crump to work at another insurance wholesaler. Therefore, the Broker of Record letters are evidence that Cheryl Smith brought some of her Crump clients with her when she changed jobs, and yet Crump has not pursued any legal claims against her.

These records will further prove that it is an accepted and common industry practice for retailers to move with brokers when they change employers. As such, this request goes directly to all of Plaintiff's claims in this case and also to Defendants' defenses.

Finally, as to Crump's litany of objections based on (1) privacy, (2) proprietary information, (3) financial information and (4) attorney-client information, this request seeks only Broker of Record letters and therefore none of those objections are applicable. Broker of Record letters do not contain any information that would implicate any Constitutional, statutory or common law privacy rights. Further, Broker of Record letters do not contain any proprietary or financial data. Moreover, Broker of Record letters are not subject to attorney-client privilege. Therefore, the Court should compel production of all documents responsive to this request.

2. **Request for Production No. 40 Is Also Directly Relevant to Crump's Claims and All Risks' and McGrath's Defenses.**

REQUEST FOR PRODUCTION NO. 40:

All change of Broker letters during the last five years naming CRUMP in place of ALL RISKS.

RESPONSE TO REQUEST FOR PRODUCTION NO. 40:

Plaintiff objects to this request on the basis it is vague, overbroad, ambiguous and susceptible to a variety of interpretations. Plaintiff objects to his request as compound and unduly burdensome. Plaintiff objects to this request as seeking information neither relevant to the claim or defense of any party, nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent it violates rights of privacy, and to the extent any such

documents contain proprietary, financial and/or confidential information. Subject to and limited by the foregoing, Plaintiff responds as follows: Plaintiff will not produce any documents related to change of Broker letters during the last five years naming Crump in place of All Risks.

REASON DOCUMENTS SHOULD BE COMPELLED:

These objections are also without merit. This request is not “vague, overbroad, ambiguous and susceptible to a variety of interpretations.” It seeks a specific type of document—Broker of Record letters—within a finite period of time. Moreover, the request is directly relevant to the claims of this matter. Crump has targeted All Risks in this lawsuit and is seeking damages. This lawsuit is centered around the alleged illegality of retailers moving from Crump to All Risks while continuing to work with the same broker. Whether or not retailers have moved from All Risks to Crump is clearly relevant to this case. These documents will further prove that it is an accepted and common industry practice for retailers to move with brokers when they change employers. Defendants are entitled to this information based on the allegations of the Complaint. Further, the request speaks directly to Defendant’s affirmative defense of unclean hands. As such, this request goes directly to both the claims in this case and Defendants’ defense.

Additionally, Crump’s objection that this request is “compound and unduly burdensome” is wholly without merit. The request is neither compound nor unduly burdensome. Finally, as to Crump’s litany of objections based on (1) privacy, (2) proprietary information, and (3) financial information, this request seeks only Broker of Record letters and therefore none of those objections is applicable. Broker of Record letters do not contain any information that would implicate any Constitutional, statutory or common law privacy rights. Further, Broker of Record letters do not contain any confidential, proprietary or financial data.

3. All Risks’ Request for The Lists That Peter Scott Made at the Direction of All Risks’ Attorneys Should Be Produced Because They Are Responsive to Numerous Requests for Production and Are Not Subject to Attorney-Client Privilege or the Work Product Doctrine.

REQUEST FOR PRODUCTION NO. 1:

All DOCUMENTS that support YOUR contention that “MCGRATH improperly and unlawfully misappropriated and used confidential information belonging to Crump ... [including]... the identity of persons, firms, and corporations which had become customers or accounts of Crump” as alleged in paragraph 23 of YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 1:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession.

REQUEST FOR PRODUCTION NO. 10:

All DOCUMENTS that support YOUR Second Cause of Action: Misappropriation of Trade Secrets as alleged in YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 10:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 13:

All DOCUMENTS that support YOUR Fifth Cause of Action: Negligent Interference with Prospective Economic Advantage (Clients) as alleged in YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 13:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 14:

All DOCUMENTS that support YOUR Sixth Cause of Action: Intentional Interference with Prospective Economic Advantage (Employees) as alleged in YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 14:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 19:

All notes, memoranda, recordings or other records of ANY statements made by ANY person that REFER or RELATE to the facts alleged in YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 19:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege

and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 27:

All Contracts that YOU contend that DEFENDANTS intentionally interfered with.

RESPONSE TO PRODUCTION NO. 27:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REASON RESPONSES SHOULD BE COMPELLED:

Crump should be compelled to produce the lists that Mr. Scott stated in his testimony that he would make in response to All Risks's counsel's question. These lists are responsive to numerous Requests for Production, including Request for Production Nos. 1, 10, 13, 14, 19, 27. However, despite stating that it would produce responsive documents in its response to All Risks' Request for Production, Crump has failed to produce these documents.

On June 24, 2008, All Risks reiterated its request for those documents. In a letter dated June 25, 2008, Crump stated that "Mr. Scott did prepare a list at the direction of counsel in advance of the mediation in this case, which is clearly protected by the attorney-client privilege and the work product doctrine and therefore will not be produced." This assertion, however, is contrary to Mr. Scott's testimony. In fact, Mr. Scott testified that he would make these lists at the direction of Ms. Rutter, counsel for **Defendants**. Therefore, the assertion that Mr. Scott prepared a list "at the direction of" Crump's counsel is erroneous. Moreover, neither attorney-client privilege nor work-product apply here, because the lists were not made at the direction of Mr. Scott's or Crump's counsel. Crump has no valid reason to withhold these lists and therefore the Court should compel its production.

4. **All Risks Is Entitled to Obtain The Email(s) Identified by Glenn Hargrove in His Deposition Testimony Because These Documents Are Responsive to Numerous Requests for Production Propounded by All Risks.**

REQUEST FOR PRODUCTION NO. 6:

All DOCUMENTS that support YOUR contention that “while still under the employ of Crump, Defendant MCGRATH engaged in business activities with were competitive with the work he performed at Crump, in violation of his obligations to Crump” as alleged in paragraph 29 of YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 6:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 10:

All DOCUMENTS that support YOUR Second Cause of Action: Misappropriation of Trade Secrets as alleged in YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 10:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 12:

All DOCUMENTS that support YOUR Fourth Cause of Action: Intentional Interference with Prospective Economic Advantage (Clients) as alleged in YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 12:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 15:

All DOCUMENTS that support YOUR Seventh Cause of Action: Negligent Interference with Prospective Economic Advantage (Employees) as alleged in YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 15:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege

1 and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump
 2 responds as follows: Crump will produce any non-privileged responsive documents within its
 3 custody, control, or possession. Crump believes that there are additional documents in the
 4 possession of the Defendants which they have failed to produce.

5 **REQUEST FOR PRODUCTION NO. 16:**

6 All correspondence, notes, memoranda, recordings or other DOCUMENTS that REFER
 7 or RELATE to any oral or written COMMUNICATION between YOU and DEFENDANTS
 8 concerning the alleged acts which are the subject of YOUR COMPLAINT.

9 **RESPONSE TO PRODUCTION NO. 16:**

10 Crump objects to this request to the extent that this request seeks documents which are
 11 confidential and/or proprietary in nature, including information relating to third parties. Crump
 12 objects to the extent that this request seeks documents protected by the attorney-client privilege
 13 and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump
 14 responds as follows: Crump will produce any non-privileged responsive documents within its
 15 custody, control, or possession. Crump believes that there are additional documents in the
 16 possession of the Defendants which they have failed to produce.

17 **REASONS RESPONSES SHOULD BE COMPELLED:**

18 Crump should be compelled to produce the email or emails identified by Mr. Hargrove in
 19 his deposition testimony between Defendant McGrath and Ms. Marty prior to the time they left
 20 Crump's employ. This email is responsive to Requests for Production No. 6, 7, 10, 12, 15 and 16
 21 that were propounded on Crump on January 22, 2008. On March 11, 2008, Crump responded to
 22 each of these requests that it would produce all responsive, non-privileged documents.

23 At a minimum, the email(s) identified by Mr. Hargrove are clearly responsive to many, if
 24 not all, of the above-referenced requests. The email is purportedly between Mr. McGrath and Ms.
 25 Marty, so no privilege applies, nor was this document identified in Plaintiff's privilege log. And
 26 yet, the document(s) referenced by Mr. Hargrove were not produced and were withheld even
 27 though depositions were proceeding in this case.

28 As a result, Plaintiff has willfully and inappropriately failed to produce these documents.
 Crump's withholding of these documents is a clear violation of its continuing duty to supplement
 discovery requests with information later acquired. (Federal Rule of Civil Procedure 26(e)).

5. **Crump Should Be Compelled To Produce All Responsive Documents
 Located in Defendant McGrath's Hard Drive.**

REQUEST FOR PRODUCTION NO. 1:

All DOCUMENTS that support YOUR contention that "MCGRATH improperly and
 unlawfully misappropriated and used confidential information belonging to Crump ...

[including]... the identity of persons, firms, and corporations which had become customers or accounts of Crump” as alleged in paragraph 23 of YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 1:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession.

REQUEST FOR PRODUCTION NO. 2:

All DOCUMENTS that support YOUR contention that “the information used by MCGRATH also included the source with which the insurance was placed, as well as the names of customers, policy expiration dates, policy terms, conditions and rates and familiarity with the customers’ risk, all of which were agreed constituted confidential information belonging to Crump” as alleged in paragraph 24 of YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 2:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 3:

All DOCUMENTS that support YOUR contention that “MCGRATH disclosed to his new employer, All Risks, the confidential information which belongs to Crump” as alleged in paragraph 26 of YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 3:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 4:

All DOCUMENTS that support YOUR contention that “MCGRATH breached the June 7, 1996 Memorandum of Agreement in that he improperly and unlawfully took for his own use, and the use of his new employer, All Risks, records, files and lists as well as other materials which had been furnished to him as a Crump employee” as alleged in paragraph 27 of YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 4:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the

possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 5:

All DOCUMENTS that support YOUR contention that “MCGRATH obtained and has used electronic versions of confidential information of Crump” as alleged in paragraph 28 of YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 5:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce, such as Michael McGrath’s computer, which Defendants have prevented Crump from accessing as requested.

REQUEST FOR PRODUCTION NO. 6:

All DOCUMENTS that support YOUR contention that “while still under the employ of Crump, Defendant MCGRATH engaged in business activities with were competitive with the work he performed at Crump, in violation of his obligations to Crump” as alleged in paragraph 29 of YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 6:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 7:

All DOCUMENTS that support YOUR contention that MCGRATH “solicited Crump employees to cease their employment relationship with Crump, and instead commence employment with MCGRATH’s new employer, All Risks” as alleged in paragraph 30 of YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 7:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 8:

All DOCUMENTS that MCGRATH “failed to provide timely notice of his intent to terminate the [employment] relationship” with YOU as alleged in paragraph 31 of YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 8:

Crump will produce any non-privileged responsive documents within its custody, control, or possession.

REQUEST FOR PRODUCTION NO. 9:

All DOCUMENTS that support YOUR First Cause of Action: Breach of Contract as alleged in YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 9:

Crump objects to this request as it is overbroad and unintelligible. There is no assertion that Crump has failed to perform its contractual obligations, and such a request would amount to asking Crump to provide information to prove the unknown. Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Crump shall not produce any such documents.

REQUEST FOR PRODUCTION NO. 10:

All DOCUMENTS that support YOUR Second Cause of Action: Misappropriation of Trade Secrets as alleged in YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 10:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 11:

All DOCUMENTS that support YOUR Third Cause of Action: Breach of Fiduciary Duty as alleged in YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 11:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 12:

All DOCUMENTS that support YOUR Fourth Cause of Action: Intentional Interference with Prospective Economic Advantage (Clients) as alleged in YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 12:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 13:

All DOCUMENTS that support YOUR Fifth Cause of Action: Negligent Interference

with Prospective Economic Advantage (Clients) as alleged in YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 13:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 14:

All DOCUMENTS that support YOUR Sixth Cause of Action: Intentional Interference with Prospective Economic Advantage (Employees) as alleged in YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 14:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 15:

All DOCUMENTS that support YOUR Seventh Cause of Action: Negligent Interference with Prospective Economic Advantage (Employees) as alleged in YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 15:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 16:

All correspondence, notes, memoranda, recordings or other DOCUMENTS that REFER or RELATE to any oral or written COMMUNICATION between YOU and DEFENDANTS concerning the alleged acts which are the subject of YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 16:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 17:

All DOCUMENTS signed or authored by individuals who purport to have knowledge of some or all the facts alleged in YOUR COMPLAINT that REFER or RELATE to any such facts.

RESPONSE TO PRODUCTION NO. 17:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession.

REQUEST FOR PRODUCTION NO. 19:

All notes, memoranda, recordings or other records of ANY statements made by ANY person that REFER or RELATE to the facts alleged in YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 19:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 20:

All handbooks, policy statements, guidelines and other DOCUMENTS that REFER or RELATE to personnel policies, rules, codes, regulations, practices, and procedures which YOU contend apply to the terms of MCGRATH'S employment with YOU.

RESPONSE TO PRODUCTION NO. 20:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession.

REQUEST FOR PRODUCTION NO. 21:

All DOCUMENTS that REFER or RELATE to any damages, including without limitation, any economic and non-economic damages YOU allege to have suffered as a result of DEFENDANTS' conduct as alleged in YOUR COMPLAINT.

RESPONSE TO PRODUCTION NO. 21:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump's investigation into the facts is ongoing and it will disclose any non-privileged responsive documents within its possession of control.

REQUEST FOR PRODUCTION NO. 22:

All DOCUMENTS that REFER or RELATE to MCGRATH'S resignation of his employment with YOU.

RESPONSE TO PRODUCTION NO. 22:

Crump objects to this request to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged

responsive documents within its custody, control, or possession.

REQUEST FOR PRODUCTION NO. 23:

All DOCUMENTS that REFER or RELATE to any COMMUNICATIONS between YOU and ANY of YOUR current or former clients regarding MCGRATH that have occurred since MCGRATH'S resignation.

RESPONSE TO PRODUCTION NO. 23:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 24:

All DOCUMENTS that REFER or RELATE to any confidential and/or proprietary information that YOU allege DEFENDANTS have improperly or unlawfully used or disseminated.

RESPONSE TO PRODUCTION NO. 24:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 25:

All DOCUMENTS that REFER or RELATE to any confidential and/or proprietary information that YOU allege DEFENDANTS have improperly or unlawfully used or disclosed while soliciting business from any of YOUR clients.

RESPONSE TO PRODUCTION NO. 25:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump responds as follows: Crump will produce any non-privileged responsive documents within its custody, control, or possession. Crump believes that there are additional documents in the possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 26:

All DOCUMENTS that REFER or RELATE to any policies and procedures that YOU have implemented to protect against the dissemination of, and to maintain the confidentiality of, any information or documents which YOU allege constitute or contain YOUR confidential and/or proprietary information.

RESPONSE TO PRODUCTION NO. 26:

Crump objects to this request to the extent that this request seeks documents which are confidential and/or proprietary in nature, including information relating to third parties. Crump objects to the extent that this request seeks documents protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump

1 responds as follows: Crump will produce any non-privileged responsive documents within its
2 custody, control, or possession.

3 **REQUEST FOR PRODUCTION NO. 27:**

4 All Contracts that YOU contend that DEFENDANTS intentionally interfered with.

5 **RESPONSE TO PRODUCTION NO. 27:**

6 Crump objects to this request to the extent that this request seeks documents which are
7 confidential and/or proprietary in nature, including information relating to third parties. Crump
8 objects to the extent that this request seeks documents protected by the attorney-client privilege
9 and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump
10 responds as follows: Crump will produce any non-privileged responsive documents within its
11 custody, control, or possession. Crump believes that there are additional documents in the
12 possession of the Defendants which they have failed to produce.

13 **REQUEST FOR PRODUCTION NO. 33:**

14 All DOCUMENTS that show, refer to or relate to MCGRATH accessing data from
15 CRUMP to his home computer from April 2007 through MCGRATH's date of termination from
16 employment with CRUMP.

17 **RESPONSE TO PRODUCTION NO. 33:**

18 Crump objects to this request to the extent that this request seeks documents which are
19 confidential and/or proprietary in nature, including private information relating to third parties.
20 Crump objects to the extent that this request seeks documents protected by the attorney-client
21 privilege and/or work product doctrine. Subject to and without waiving the foregoing objections,
22 Crump responds as follows: Crump's investigation into the facts is ongoing and it will disclose
23 any non-privilege responsive documents within its custody, control, or possession. Crump
24 believe that there are additional documents in the possession of the Defendants which they have
25 failed to produce.

26 **REQUEST FOR PRODUCTION NO. 34:**

27 All DOCUMENTS that show, refer to or relate to MCGRATH downloading data from
28 CRUMP to his home computer April 2007 through MCGRATH's date of termination from
employment with CRUMP.

RESPONSE TO PRODUCTION NO. 34:

Crump objects to this request to the extent that this request seeks documents which are
confidential and/or proprietary in nature, including information relating to third parties. Crump
objects to the extent that this request seeks documents protected by the attorney-client privilege
and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump
responds as follows: Crump will produce any non-privileged responsive documents within its
custody, control, or possession. Crump believes that there are additional documents in the
possession of the Defendants which they have failed to produce.

REQUEST FOR PRODUCTION NO. 35:

All DOCUMENTS that show, refer to or relate to MCGRATH accessing the Windbroker
system from April 2007 through MCGRATH's date of termination from employment with
CRUMP.

RESPONSE TO PRODUCTION NO. 35:

Crump objects to this request to the extent that this request seeks documents which are
confidential and/or proprietary in nature, including information relating to third parties. Crump
objects to the extent that this request seeks documents protected by the attorney-client privilege
and/or work product doctrine. Subject to and without waiving the foregoing objections, Crump
responds as follows: Crump will produce any non-privileged responsive documents within its

1 custody, control, or possession. Crump believes that there are additional documents in the
2 possession of the Defendants which they have failed to produce.

3 **REASONS DOCUMENTS SHOULD BE COMPELLED:**

4 Mr. Hargrove testified that a copy of McGrath's hard drive was made and examined by
5 Crump. Now that Mr. Hargrove's testimony makes clear that Defendant McGrath's computer
6 was searched, Plaintiff has a duty to confirm that it has produced all documents responsive to the
7 requests wherein it indicated that it would produce documents.

8 Defendant All Risks is entitled to all responsive documents that were in McGrath's hard
9 drive, as Defendant's definition of "DOCUMENTS" in its Requests for Production includes
10 "computer records, and other data compilations from which information can be obtained or
11 translated..." Moreover, responsive documents that were located in McGrath's hard drive should
12 be produced as potentially responsive to Defendant's requests 1, 2, 5, 6, 7, 10, 11, 12, 13, 14, 15,
13 16, 24, 25, 33, 34 and 35.

14 Certainly, numerous documents were pulled off McGrath's hard drive. In Plaintiff's
15 Response to Defendant All Risks' Request for Production of Documents, Set One on March 11,
16 2008 Defendant All Risks' Request for Production of Documents, Set Two on April 29, 2008,
17 Plaintiff agreed to produce these documents. The documents produced in response to these
18 requests to date, however, do not reflect all of these categories of documents, and as such, they
19 must be compelled by the Court.

20 6. **Crump Should Be Compelled to Either Supplement Its Responses to**
21 **Request for Production Set Two Or to Amend Its Responses to**
22 **Provide That No Such Documents Exist.**

23 All Risks respectfully requests that the Court order Plaintiff to either provide All Risks
24 with all documents responsive to Request for Production Set Two or to amend its responses to
25 state that no responsive documents exist.

26 **B. Further Depositions Should Be Compelled Regarding These**
27 **Documents.**

28 Crump should have produced the aforementioned documents because they are responsive

1 to the document requests propounded by All Risks. Because Crump failed to timely produce
2 these documents, however, All Risks could not question Mr. Scott or Mr. Hargrove about these
3 documents. Therefore, the Court should compel Mr. Scott and Mr. Hargrove to appear for further
4 depositions so that they can be questioned about these documents.

5 **IV. CONCLUSION**

6 For the foregoing reasons, All Risks respectfully requests that this Court grant its motion
7 to compel responses to its discovery requests, and for expenses.

8 Dated: July 1, 2008

CURIALE DELLAVERSON HIRSCHFELD
& KRAEMER, LLP

9
10 By: Kristen L. Williams
11 Kristen L. Williams
12 Donna M. Rutter

13 Attorneys for Defendants
14 MICHAEL P. McGRATH, ALL RISKS,
15 LTD.
16
17
18
19
20
21
22
23
24
25
26
27
28